

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Accusation     )  
Against:                                     )**

**ROBERT HUGH GERNER, M.D.     )**

**Case No. 17-2013-230899**

**Physician's and Surgeon's     )  
Certificate No. G25068         )**

**Respondent                             )**

**DECISION**

**The attached Stipulated Surrender of License is hereby adopted as the  
Decision and Order of the Medical Board of California, Department of  
Consumer Affairs, State of California.**

**This Decision shall become effective at 5:00 p.m. on July 28, 2016.**

**IT IS SO ORDERED July 21, 2016.**

**MEDICAL BOARD OF CALIFORNIA**

**By:**

  
\_\_\_\_\_  
**Kimberly Kirchmeyer  
Executive Director**

1 KAMALA D. HARRIS  
Attorney General of California  
2 JUDITH T. ALVARADO  
Supervising Deputy Attorney General  
3 State Bar No. 155307  
California Department of Justice  
4 300 South Spring Street, Suite 1702  
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5 Telephone: (213) 576-7149  
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6 *Attorneys for Complainant*

7 **BEFORE THE**  
8 **MEDICAL BOARD OF CALIFORNIA**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

12 **ROBERT GERNER, M.D.**  
13 **10850 Wilshire Blvd.**  
**Los Angeles, CA 90024**  
**Physician's and Surgeon's Certificate**  
**No. G 25068,**

14 Respondent.

Case No. 17-2013-230899

OAH No. 2016010894

**STIPULATED SURRENDER OF  
LICENSE AND ORDER**

15  
16 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
17 entitled proceedings that the following matters are true:

18 PARTIES

19 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board  
20 of California. She brought this action solely in her official capacity and is represented in this  
21 matter by Kamala D. Harris, Attorney General of the State of California, by Judith T. Alvarado,  
22 Supervising Deputy Attorney General.

23 2. Robert Gerner, M.D. (Respondent) is represented in this proceeding by attorney Gary  
24 Wittenberg, Esq., whose address is 1901 Avenue of the Stars, Suite 1750, Los Angeles, CA  
25 90067-6056.

26 3. On or about July 18, 1973, the Medical Board of California issued Physician's and  
27 Surgeon's Certificate No. G 25068 to Robert Gerner, M.D. The Physician's and Surgeon's  
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1 Certificate was in full force and effect at all times relevant to the charges brought in Accusation  
2 No. 17-2013-230899 and will expire on November 30, 2016, unless renewed.

3 JURISDICTION

4 4. Accusation No. 17-2013-230899 was filed before the Medical Board of California  
5 (Board), Department of Consumer Affairs, and is currently pending against Respondent. The  
6 Accusation and all other statutorily required documents were properly served on Respondent on  
7 September 23, 2015. Respondent timely filed his Notice of Defense contesting the Accusation.  
8 A copy of Accusation No. 17-2013-230899 is attached as Exhibit A and incorporated by  
9 reference.

10 ADVISEMENT AND WAIVERS

11 5. Respondent has carefully read, fully discussed with counsel, and understands the  
12 charges and allegations in Accusation No. 17-2013-230899. Respondent also has carefully read,  
13 fully discussed with counsel, and understands the effects of this Stipulated Surrender of License  
14 and Order.

15 6. Respondent is fully aware of his legal rights in this matter, including the right to a  
16 hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at  
17 his own expense; the right to confront and cross-examine the witnesses against him; the right to  
18 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel  
19 the attendance of witnesses and the production of documents; the right to reconsideration and  
20 court review of an adverse decision; and all other rights accorded by the California  
21 Administrative Procedure Act and other applicable laws.

22 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
23 every right set forth above.

24 CULPABILITY

25 8. Respondent understands that the charges and allegations in Accusation No. 17-2013-  
26 230899, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and  
27 Surgeon's Certificate.

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9. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation and that those charges constitute cause for discipline. Respondent hereby gives up his right to contest that cause for discipline exists based on those charges.

10. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Physician's and Surgeon's Certificate without further process.

## CONTINGENCY

11. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender of License and Order, including Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

## ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 25068, issued to Respondent ROBERT GERNER, M.D., is surrendered and accepted by the Medical Board of California.



1 I have read and fully discussed with Respondent Robert Gerner, M.D. the terms and  
2 conditions and other matters contained in this Stipulated Surrender of License and Order. I  
3 approve its form and content.

4 DATED: 6-20-16

  
GARY WITTENBERG, ESQ.  
Attorney for Respondent


6  
7 ENDORSEMENT

8 The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted  
9 for consideration by the Medical Board of California of the Department of Consumer Affairs.

10 Dated: 6/23/2016

Respectfully submitted,

11 KAMALA D. HARRIS  
Attorney General of California

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13   
14 JUDITH T. ALVARADO  
Supervising Deputy Attorney General  
15 *Attorneys for Complainant*

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# **EXHIBIT A**

1 KAMALA D. HARRIS  
Attorney General of California  
2 JUDITH T. ALVARADO  
Supervising Deputy Attorney General  
3 State Bar No. 155307  
California Department of Justice  
4 300 South Spring Street, Suite 1702  
Los Angeles, California 90013  
5 Telephone: (213) 576-7149  
Facsimile: (213) 897-9395  
6 *Attorneys for Complainant*

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO September 23 20 15  
BY R. Voong ANALYST

7  
8 **BEFORE THE**  
**MEDICAL BOARD OF CALIFORNIA**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 17-2013-230899

11 **Robert Gerner, M.D.**  
12 **10850 Wilshire Blvd., Suite 1260**  
13 **Los Angeles, CA 90024**

**A C C U S A T I O N**

14 **Physician's and Surgeon's Certificate**  
15 **No. G 25068,**

Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official  
20 capacity as the Executive Director of the Medical Board of California, Department of Consumer  
21 Affairs (Board).

22 2. On or about July 18, 1973, the Medical Board issued Physician's and Surgeon's  
23 Certificate Number G 25068 to Robert Gerner, M.D. (Respondent). The Physician's and  
24 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought  
25 herein and will expire on November 30, 2016, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board, under the authority of the following  
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.



1       4.     Section 2004 of the Code states:

2       “The board shall have the responsibility for the following:

3       “(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice  
4     Act.

5       “(b) The administration and hearing of disciplinary actions.

6       “(c) Carrying out disciplinary actions appropriate to findings made by a panel or an  
7     administrative law judge.

8       “(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of  
9     disciplinary actions.

10       “(e) Reviewing the quality of medical practice carried out by physician and surgeon  
11     certificate holders under the jurisdiction of the board.

12       “(f) Approving undergraduate and graduate medical education programs.

13       “(g) Approving clinical clerkship and special programs and hospitals for the programs in  
14     subdivision (f).

15       “(h) Issuing licenses and certificates under the board's jurisdiction.

16       “(i) Administering the board's continuing medical education program.”

17       5.     Section 2227 of the Code provides that a licensee who is found guilty under the  
18     Medical Practice Act may have his or her license revoked, suspended for a period not to exceed  
19     one year, placed on probation and required to pay the costs of probation monitoring, or such other  
20     action taken in relation to discipline as the Board deems proper.

21       6.     Section 2234 of the Code, states:

22       “The board shall take action against any licensee who is charged with unprofessional  
23     conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not  
24     limited to, the following:

25       “(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the  
26     violation of, or conspiring to violate any provision of this chapter.

27       “(b) Gross negligence.

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1 “(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or  
2 omissions. An initial negligent act or omission followed by a separate and distinct departure from  
3 the applicable standard of care shall constitute repeated negligent acts.

4 “(1) An initial negligent diagnosis followed by an act or omission medically appropriate  
5 for that negligent diagnosis of the patient shall constitute a single negligent act.

6 “(2) When the standard of care requires a change in the diagnosis, act, or omission that  
7 constitutes the negligent act described in paragraph (1), including, but not limited to, a  
8 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the  
9 applicable standard of care, each departure constitutes a separate and distinct breach of the  
10 standard of care.

11 “(d) Incompetence.

12 “(e) The commission of any act involving dishonesty or corruption which is substantially  
13 related to the qualifications, functions, or duties of a physician and surgeon.

14 “(f) Any action or conduct which would have warranted the denial of a certificate.

15 “(g) The practice of medicine from this state into another state or country without meeting  
16 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not  
17 apply to this subdivision. This subdivision shall become operative upon the implementation of  
18 the proposed registration program described in Section 2052.5.

19 “(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and  
20 participate in an interview by the board. This subdivision shall only apply to a certificate holder  
21 who is the subject of an investigation by the board.”

22 7. Section 2266 of the Code states: “The failure of a physician and surgeon to maintain  
23 adequate and accurate records relating to the provision of services to their patients constitutes  
24 unprofessional conduct.”

25 8. Section 726 of the Code states:

26 “The commission of any act of sexual abuse, misconduct, or relations with a patient, client,  
27 or customer constitutes unprofessional conduct and grounds for disciplinary action for any  
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1 person licensed under this division, under any initiative act referred to in this division and under  
2 Chapter 17 (commencing with Section 9000) of Division 3.

3 "This section shall not apply to sexual contact between a physician and surgeon and his or  
4 her spouse or person in an equivalent domestic relationship when that physician and surgeon  
5 provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person  
6 in an equivalent domestic relationship."

### 7 **FIRST CAUSE FOR DISCIPLINE**

#### 8 **(Gross Negligence)**

9 9. Respondent is subject to disciplinary action under section 2234, subdivision (b), of  
10 the Code in that he was grossly negligent in the care and treatment of patient C.R.<sup>1</sup> The  
11 circumstances are as follows:

12 10. Respondent is a psychiatrist, he maintains a private practice in Westwood.  
13 Respondent began treating C.R. in or around March 1996 for Attention Deficit Hyperactivity  
14 Disorder, Major Depression and Obsessive Compulsive Disorder. He continued to treat C.R.  
15 through January 2008, prescribing psychiatric medications for her various disorders.

16 11. In or about 2004, Respondent and C.R. began a romantic relationship, which included  
17 sexual intercourse.

18 12. On or about February 1, 2008, C.R.'s husband left her.

19 13. In or about August 2008, Respondent moved into C.R.'s home in Pacific Palisades.  
20 Respondent lived with C.R. until August 2011. During this time-frame, Respondent continued to  
21 prescribe medications for C.R.

22 14. The standard of care is to maintain appropriate professional boundaries when there is  
23 a professional relationship between a patient and her treating psychiatrist.

24 15. Respondent committed gross negligence, in violation of section 2234, subdivision (b),  
25 of the Code in his care and treatment of C.R. in that he engaged in a sexual relationship with the  
26 patient for several years during the time he was her treating psychiatrist.

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27 <sup>1</sup> In this Accusation, the patient is referred to by initial to protect her privacy.  
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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Sexual Misconduct)**

3 16. Respondent is subject to disciplinary action under section 726 of the Code in that he  
4 engaged in a sexual relationship with patient C.R. during the time he was her psychiatrist. The  
5 circumstances are as follows:

6 17. The American Psychiatric Association's Principles of Medical Ethics, 2013 edition,  
7 Section 2,1: states:

8 "The requirement that the physician conduct himself/herself with propriety in his or  
9 her profession and in all the actions of his or her life is especially important in the case of  
10 the psychiatrist because the patient tends to model his or her behavior after that of his or her  
11 psychiatrist by identification. Further, the necessary intensity of the treatment relationship  
12 may tend to activate sexual and other needs and fantasies on the part of both patient and  
13 psychiatrist, while weakening the objectivity necessary for control. Additionally, the  
14 inherent inequality in the doctor-patient relationship may lead to exploitation of the patient.  
15 Sexual activity with a current or former patient is unethical."

16 18. The allegations of paragraphs 10 through 13, above, are incorporated herein by  
17 reference as if fully set forth.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Unprofessional Misconduct)**

20 19. Respondent is subject to disciplinary action under sections 726 and 2234 of the Code,  
21 for unprofessional conduct in that he engaged in a sexual relationship with patient C.R. during the  
22 time he was her psychiatrist. The circumstances are as follows:

23 20. The allegations of paragraphs 10 through 13, and 17 and 18, above, are incorporated  
24 herein by reference as if fully set forth.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Inadequate Records)**

3 21. Respondent is subject to disciplinary action under section 2266 of the Code in that he  
4 failed to maintain adequate and accurate records on patient C.R. The circumstances are as  
5 follows:

6 22. The allegations of paragraphs 10 through 13, above, are incorporated herein by  
7 reference as if fully set forth.

8 23. The standard of practice is to maintain legible, timely, clear and accurate medical  
9 records that document all aspects of a patient's treatment.

10 24. Respondent's records for C.R. are practically illegible due to his poor handwriting.  
11 His progress notes lacked clarity, specificity and descriptive detail. Many of the notes are limited  
12 to brief comments. In some cases, the entire visit note is a single word.

13 25. The medical record lacks precise details regarding when and why certain medications  
14 were used. And, the medical record does not appear to accurately document all of the  
15 medications prescribed by Respondent for C.R. The lack of detail is concerning for a patient such  
16 as C.R. who was on a complex medication regimen.

17 **DISCIPLINE CONSIDERATIONS**

18 26. To determine the degree of discipline, if any, to be imposed on Respondent,  
19 Complainant alleges that in a Decision and Order that became effective November 10, 1994, *In*  
20 *the Matter of the Accusation Against Robert H. Gerner, M.D.* case number 17-1990-002836,  
21 Respondent's license was revoked, stayed and placed on seven years probation, with a sixty-day  
22 suspension, for sexual misconduct with a patient. That decision is now final and is incorporated  
23 by reference as if fully set forth.

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1 **PRAYER**

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
3 and that following the hearing, the Medical Board of California issue a decision:

- 4 1. Revoking or suspending Physician's and Surgeon's Certificate Number G 25068,  
5 issued to Robert Gerner, M.D.;
- 6 2. Revoking, suspending or denying approval of Robert Gerner, M.D.'s authority to  
7 supervise physician assistants, pursuant to section 3527 of the Code;
- 8 3. Ordering Robert Gerner, M.D., if placed on probation, to pay the Board the costs of  
9 probation monitoring; and
- 10 4. Taking such other and further action as deemed necessary and proper.

11  
12 DATED: September 23, 2015

  
KIMBERLY KIRCHMEYER  
Executive Director  
Medical Board of California  
Department of Consumer Affairs  
State of California  
*Complainant*

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